



UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and
Information Administration
Washington, D.C. 20230

December 12, 1995

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OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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Re: Revision of Rules and Policies for the Direct Broadcast
Satellite Service -- IB Docket No. 95-168;
PP Docket No. 93-253

Dear Mr. Caton:

The National Telecommunications and Information
Administration (NTIA) files herewith four copies of a letter from
Larry Irving, Assistant Secretary of Commerce for Communications
and Information, to Reed Hundt in the above-captioned proceeding.

Please refer any questions to the undersigned at (202) 482-
0012.

Yours truly,

Bruce A. Henoch
Attorney-Advisor

Attachments

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The Assistant Secretary for
Communications and Information
Washington, D.C. 20230

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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Re: Revision of Rules and Policies for the Direct Broadcast
Satellite Service -- 18 Docket No. 95-168;
PP Docket No. 93-253

Dear Mr. Hundt:

The National Telecommunications and Information Administration (NTIA), as the President's principal advisor on telecommunications policy matters, applauds the steps taken by the Commission in this proceeding to advance Direct Broadcast Satellite (DBS) service as a viable competitor to cable television. Cable television operators have enjoyed a near monopoly on the delivery of multichannel video programming in virtually all communities. Although DBS is still in its infancy and its impact has not yet been fully realized (DBS penetration is still below three percent), it has the potential to develop into a strong competitor to cable, thus helping to prevent cable operators from engaging in monopolistic pricing and service practices.^{1/}

To ensure the continued growth of DBS as a competitor to cable, the Commission should take two basic steps. The Commission should implement ownership restrictions to prevent large cable MSOs from holding attributable ownership interests in DBS licensees. Involvement by large cable MSOs in the DBS business may result in the development of DBS as merely a

^{1/} The potential of DBS as a competitor to cable has been cited repeatedly. For example, Congress in the legislative history of the 1992 Cable Act cited a RAND study concluding that "during the 1990's, high-powered DBS systems have greater potential for widespread competition with cable systems than do other multichannel video alternatives." H.R. Rep. No. 628, 102d Cong., 2d Sess. (1992), at 46. Although there has been extensive discussion about other technologies such as Video Dialtone (VDT) and wireless cable eventually competing with cable, DBS is currently the only competitor available on a nationwide basis and will likely remain so for the foreseeable future. In fact, the Commission has yet to promulgate the final rules under which VDT, the most often-cited future competitor, will operate.

supplement to, rather than a competitor against, cable television. The Commission should also adopt rules to ensure that the principal use of spectrum allocated for DBS is digital video programming and should permit ancillary services only to the extent that such services do not interfere with such use.^{2/}

A. Ownership Restrictions

Ownership restrictions are essential to the development of DBS as a competitor to cable. Permitting large cable MSOs to hold attributable interests in DBS licensees would have several negative effects. First, as discussed by the U.S. Department of Justice ("DoJ") in its comments, a DBS operator affiliated with a large cable operator would have less incentive to offer DBS service that competes effectively against cable.^{3/} An unaffiliated DBS operator, on the other hand, would be much more likely to offer the best service and pricing it can, free from the worry that the DBS service might siphon away customers from affiliated cable systems. Second, the number of available DBS channels is very limited. Allowing large cable MSOs to occupy any of the few channel slots that are available would block out potential unaffiliated competitors, which could affect prices and service in both the cable and the DBS markets. Third, as the Administration has emphasized in other contexts, media ownership concentration is undesirable not just because it hurts competition but because it also reduces the number of media outlets in a market.^{4/} Ultimately, it is consumers that suffer as prices rise and viewpoint diversity shrinks.

^{2/} NTIA supports the Commission's plan to assign the spectrum recovered from Advanced Communications Corp. by competitive bidding. This will help achieve the Commission's goal of ensuring that the spectrum is assigned only to those entities with the means and desire to construct a DBS system in the near term. The rapid construction and deployment of new systems will mean new services for customers and greater competition in the multichannel video programming distribution market.

^{3/} Comments of the United States Department of Justice, IB Docket No. 95-168; PP Docket No. 93-253, filed November 20, 1995, at 6 ("DoJ comments").

^{4/} See, e.g., Statement by the President on H.R. 1555, August 1, 1995, in which President Clinton denounced provisions in the House telecommunications legislation that would "promote[] mergers and concentration of power . . . allow[ing] fewer people to control greater numbers of television, radio and newspaper outlets in every community."

NTIA recommends that the Commission address these issues by adopting the structural approach recommended by DoJ.^{2/} This approach would prohibit cable MSOs above a certain size from owning an attributable interest in a DBS licensee. DoJ suggested by way of example that such a restriction need not apply to MSOs that have less than ten percent of the nation's cable subscribers. We recommend that the Commission decide the appropriate threshold after examining the relevant markets. In no case, however, should the threshold be higher than ten percent. While it is unlikely that a small MSO would have the incentive to downgrade the quality or quantity of DBS service to protect its cable holdings, a larger MSO would have an incentive to do so and should be prevented from entering the DBS market.⁴

B. Ancillary Services

The Commission's Notice of Proposed Rulemaking discussed the use of the spectrum by DBS operators for ancillary purposes.⁵ NTIA agrees with the Commission that it is important for DBS licensees to use the spectrum primarily for DBS service. While it is true that DBS operators must be given a degree of flexibility in configuring and operating their systems and in raising supplemental funds, such needs should not override the primary public policy objective of this proceeding: the development of an effective competitor to cable operators. Because of the variable nature of digital signal compression and the possible advent of spectrum-hungry high-definition television, strict capacity or temporal limitations alone may not be practicable. The Commission should therefore adopt a flexible approach that takes into consideration the nature of digital technology to allow DBS operators to engage in ancillary services

^{2/} DoJ comments at 8.

^{5/} NTIA is also concerned about possible discriminatory behavior by wholesale DBS providers, directed against both unaffiliated multichannel video program distributors and unaffiliated program suppliers. The Commission can prevent such behavior by ensuring that any ownership restrictions adopted by the Commission also apply to ownership interests in DBS wholesalers. In addition, NTIA supports adoption of the program access rules proposed by DoJ in its comments. See DoJ comments at 17.

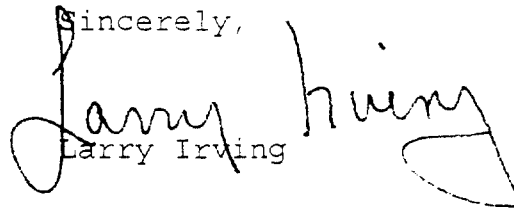
^{2/} Notice of Proposed Rule Making, In re Revision of Rules and Policies for the Direct Broadcast Satellite Service, IB Docket No. 95-168; PP Docket No. 93-253 (released Oct. 30, 1995), at ¶¶ 28-32.

The Honorable Reed E. Hundt
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only to the extent that such services do not interfere with the principal use for which DBS spectrum was intended.

Should you have any questions about NTIA's recommendations, please do not hesitate to contact me.

Sincerely,


Larry Irving

cc: The Honorable James H. Quello
The Honorable Andrew C. Barrett
The Honorable Rachelle B. Chong
The Honorable Susan Ness
Scott Blake Harris, Chief, International Bureau
Robert M. Pepper, Chief, Office of Plans and Policy

CERTIFICATE OF SERVICE

I Cathleen Kelly Wasilewski, do hereby certify that I have this 12th day of December, 1995 mailed by first class United States mail, postage prepaid, copies of the foregoing letter to interested parties in this proceeding.

Cathleen Kelly Wasilewski
Cathleen Kelly Wasilewski